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February 10, 2000

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BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: Establishment of a Class A Television Service
MM Docket No. 00-10

Dear Ms. Salas:

Transmitted herewith on behalf of Educational Broadcasting Corporation, licensee of noncommercial educational television station WNET, Newark, New Jersey, are an original and nine (9) copies of its Comments on the *Notice of Proposed Rule Making* in the above-referenced proceeding.

Diskettes containing these Comments are being simultaneously submitted to Wanda Hardy, FCC Paralegal Specialist, and to International Transcription Service, Inc.

Respectfully submitted,

Barbara K. Gardner

Barbara K. Gardner

Enclosures

cc with diskette: Wanda Hardy
 International Transcription Service, Inc.

219

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

Establishment of a Class A
Television Service

To: The Commission

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MM Docket No. 00-10

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FEDERAL COMMUNICATIONS COMMISSION

COMMENTS OF EDUCATIONAL BROADCASTING CORPORATION

Educational Broadcasting Corporation ("EBC"), licensee of noncommercial educational television station WNET, operating on NTSC Channel 13, Newark, New Jersey, hereby comments on the Commission's *Notice of Proposed Rule Making* in the captioned proceeding ("*Notice*").¹ As a licensee assigned a non-core DTV channel which it must vacate at the end of the DTV transition, EBC joins other broadcasters in urging the Commission to provide assurances that the Class A service will not be permitted to impede the ability of *all* full-service DTV licensees to achieve replication and maximization, even where a maximization application cannot be filed by May 1, 2000.²

¹ See *Establishment of a Class A Television Service*, Order and Notice of Proposed Rule Making, MM Docket No. 00-10, MM Docket No. 99-292, RM-9260 (FCC 00-16 rel. Jan. 13, 2000).

² See Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, Comments of the Association of America's Public Television Stations, and Comments of Certain Channel 2-6 Licensees (Mt. Mansfield Television, Inc., *et al.*) on the *Notice*. Each points out that the Commission must protect all full service stations seeking to replicate or maximize upon relocating their DTV operations to an in-core channel at the end of the DTV transition.

INTRODUCTION

Station WNET is the primary noncommercial educational television station in the nation's largest television market. Like most New York City and some northern New Jersey stations, WNET transmits from the World Trade Center. Although the station utilizes an NTSC frequency allotted to Newark, New Jersey, the mandate of EBC's predecessor was, and EBC's mission remains, to provide a noncommercial educational and cultural program service to the entire New York City-northern New Jersey-Connecticut metropolitan area, as well as to make its programming available nationwide.³ Despite uncertain revenues, WNET has long been in the forefront of utilizing new technologies to carry out its educational mission.⁴

DISCUSSION

EBC has been assigned DTV Channel 61, on which frequency it must construct WNET-DT not later than May 1, 2003 pursuant to a construction permit application filed by May 1, 2000.⁵ The Channel 61 DTV assignment has the following consequences:

³ *NTA Television Broadcasting Corp.*, 44 F.C.C. 2563, 2564-65 (1961). WNET has produced such acclaimed PBS program series as *Great Performances*, *Nature*, *The MacNeil/Lehrer NewsHour*, *American Masters*, and *Charlie Rose*, as well as award-winning local programming such as *CityArts*.

⁴ For example, WNET's Kravis Multimedia Educational Center develops educational products for the CD-ROM and DVD media, while its nationally-recognized Teacher Training Institute helps teachers of science and technology use television effectively in the classroom. In addition, WNET was among the earliest creators of a World Wide Web site intended to increase the impact of its on-air educational and cultural programming.

⁵ 47 C.F.R. § 73.624(d)(1)(iv), (e).

- Pursuant to the Balanced Budget Act of 1997, EBC must vacate Channel 61 at the end of the DTV transition, since Channels 60-69 have been reallocated.⁶
- Consequently, at the conclusion of the DTV transition period, and despite its limited resources, EBC must construct a *second* DTV facility, on a core channel, *i.e.*, either on its current analog frequency (Channel 13), or on another channel.⁷
- In comparison to its current analog coverage area, EBC's Channel 61 DTV service area will be diminished.⁸

Notwithstanding the reduced service area that will result from activation of DTV Channel 61 at the parameters specified by the Commission, EBC will be unable to maximize those temporary facilities, due to technical constraints related to the planned World Trade Center shared DTV antenna. Accordingly, it currently plans to allocate its scarce resources — already strained by having to build a second DTV facility — to maximization of its permanent DTV station on its current analog channel (or such other in-core channel as it may ultimately utilize for DTV).

⁶ 47 U.S.C. § 337(a), (e)(1).

⁷ See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service* (“ATV”), *Sixth Report and Order*, 12 F.C.C. Rcd 14588, 14628 (1997) (“We also will allow broadcasters, wherever feasible, to switch their DTV service to their existing NTSC channels at the end of the transition if they so desire. Such channel switches would be permitted provided that the station’s existing channel is within the final DTV core spectrum.”).

⁸ WNET’s DTV/NTSC area match is only 94.2%; while 17,110,000 persons receive its Channel 13 NTSC service, only 17,015,000 will receive DTV service on Channel 61. *ATV*, *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders* (“*Second Reconsideration Order*”), 14 F.C.C. Rcd 1348, 1446 (1998). See also Public Notice, “Additional Application Processing Guidelines for Digital Television (DTV),” Mimeo 84889 at 14 (Aug. 10, 1998) (listing EBC’s Channel 61 DTV allotment among those where NTSC service is greater than DTV service).

In enacting the Community Broadcasters Protection Act whose provisions this proceeding will implement (the “CBPA”), Congress demonstrated its awareness that many full service stations will need to relocate their DTV operations to an in-core channel, noting that “at the end of the transition, all analog broadcast TV stations will have to cease operation, and the DTV stations on broadcast channels 52 through 69 will be relocated to new channels in the DTV core spectrum.”⁹ Congress further stated that the legislation, “recognizing the importance of, and the engineering complexity in, the FCC’s plan to convert full-service television stations to digital format, . . . protects the ability of these stations to provide both digital and analog service throughout their existing service areas.”¹⁰

Consistent with Congress’ intent, the Commission has correctly interpreted the new law as “requir[ing] Class A applicants to protect all stations seeking to replicate or maximize DTV power”¹¹ And in specific recognition that those full service stations that have been assigned out-of-core DTV channels “may not be in a position to file maximization applications” for the analog channels to which they will return by the May 1, 2000 deadline prescribed in the CBPA, the Commission correctly seeks to preserve their ability to maximize. Thus, the Commission asks “how the maximization rights in the statute can be applied to full power stations *that maximize their DTV facilities* but subsequently move their digital operations

⁹ H.R. Conf. Rep. No. 106-464 at 151 (1999).

¹⁰ *Id.* at 149.

¹¹ *Notice* at 14.

to their original analog channel after the transition.”¹² Assuming that it should preserve these stations’ right to maximize on their analog channels should they revert to them, the Commission queries, “[H]ow can the right to *replicate the station’s maximized DTV service area* be preserved on the analog channel?”¹³

EBC submits that due to the foregoing italicized language, the Commission’s questions are too narrow. The right of stations in WNET’s position to replicate their current NTSC service areas, not their “maximized DTV service area[s],” and to maximize their final DTV facilities operating on core channels, should be protected *whether or not they have maximized their initial, interim DTV facilities* on out-of-core channels.

The concept of service “replication” has never been understood to mean replication of an initial DTV service area by the same licensee’s second permanent DTV facility. Instead, the term means replication of the *analog* service area by the related DTV facility.¹⁴ Nor do the Commission’s maximization procedures include any requirement that maximization of a licensee’s initial, temporary DTV station is a prerequisite to maximizing its permanent digital TV facility.¹⁵ In short, with respect to licensees such as EBC who, due to technical constraints, cannot maximize their out-of-core DTV facilities, or licensees that choose not to do so for

¹² *Id.* at 15 (emphasis added).

¹³ *Id.* (emphasis added).

¹⁴ *ATV, Sixth Report and Order*, 12 F.C.C. Rcd at 14630 (DTV allotments are intended to replicate existing NTSC service areas).

¹⁵ *See id.* at 14606; *ATV, Second Reconsideration Order* at 1370-71.

financial or any other reasons, the right ultimately to replicate current analog facilities on the final DTV facility, and to maximize that facility, must be preserved despite the failure to construct maximized interim DTV facilities.¹⁶ Only in this way can the Commission assure that the public served by EBC and similarly situated licensees will not suffer a loss of service, in contravention to Congress' goal of preserving the full benefits of digital television.

CONCLUSION

For the foregoing reasons, the Commission should preserve the ability of those full-power stations that, like WNET, must return to their analog (or other in-core) channels at the conclusion of the DTV transition, to replicate their current analog facilities with their final DTV facilities and to maximize those DTV facilities, notwithstanding their inability to file an application to do so by May 1, 2000. Such replication and maximization opportunities must be

¹⁶ In any event, as noted in EBC's December 29, 1999 letter to H. John Morgan, Assistant Chief (Engineering) of the Mass Media Bureau's Video Services Division, notifying the Commission of EBC's request for maximization protection for digital operations on Channel 13 (or any other in-core channel), should circumstances change so as to permit EBC to maximize its temporary Channel 61 DTV facilities, no notification to the Commission pursuant to the CBPA would be required, since the Commission is barred from granting Class A licenses in the Channels 60-69 band. 47 U.S.C. § 336(f)(6)(A).

identical to those afforded to licensees who are able to meet the statutory deadline, and must be provided whether or not the licensee has maximized its initial, temporary DTV facilities.

Respectfully submitted,

EDUCATIONAL BROADCASTING
CORPORATION

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February 10, 2000

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